

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

JAMES G. KOZENIEWSKI and	:	IN THE COURT OF COMMON PLEAS
MARY CATHERINE KOZENIEWSKI,	:	PHILADELPHIA COUNTY, PA
Plaintiffs	:	
	:	NO.: 170502543
v.	:	
	:	JURY TRIAL DEMANDED
TEOFILO DIAZ and	:	
CARGO SOLUTION EXPRESS, INC. and	:	CIVIL ACTION - LAW
DIRECT HAUL CARRIER, LLC,	:	
Defendants	:	

NOTICE OF REMOVAL

Defendants, Teofilo Diaz and Cargo Solutions Express, Inc., (hereinafter “Moving Defendants”) hereby file the following Notice of Removal, and in support thereof, state the following:

1. Cargo Solutions Express, Inc., is a California Corporation with its principal place of business located at 15597 Valley Blvd., Fontana, CA, 92335.
2. Defendant, Teofilo Diaz, is an individual with a last known address as 33 Hanford Street, Newark, NJ 07114.
3. By information and belief, Defendant, Teofilo Diaz, has never been a Pennsylvania resident.
4. Defendant, Direct Haul Carrier, LLC, is/was a California limited liability corporation with a principal place of business of 7349 Milliken Avenue, Suite 140-310, Rancho Cucamonga, CA 91730.
5. Plaintiffs, James and Mary Kozeniewski, are individuals who reside at 1125 Silver Lake Lane, Blue Bell, Montgomery County, Pennsylvania, 19422.

6. Plaintiffs filed a Complaint against Defendants in the Court of Common Pleas of Philadelphia County, Pennsylvania on May 17, 2017. A true and correct copy of Plaintiffs' Complaint is attached as Exhibit "A."

7. In the Complaint, Plaintiffs seek damages, *inter alia*, for personal injuries allegedly sustained in a motor vehicle accident on May 28, 2015, at or near Lincoln Highway, Salisbury Township, Lancaster County, Pennsylvania.

8. At a Case Management Conference held on August 28, 2017, Plaintiffs made a settlement demand of Four Hundred Thousand Dollars (\$400,000.00).

9. As such, Plaintiff's claims exceed the jurisdictional amount of Seventy-Five Thousand Dollars (\$75,000.00).

10. Moving Defendants are filing this Notice of Removal in that complete diversity of citizenship exists between Plaintiffs, as citizens of Pennsylvania, and Defendants, who are neither citizens of Pennsylvania, nor do they maintain principal places of business in Pennsylvania and the amount in controversy is in excess of Seventy-Five Thousand Dollars (\$75,000.00).

11. Under U.S.C. § 1446(b), removal is timely if filed within thirty (30) days of service of the Complaint.

12. As of the date of filing of this Notice of Removal, Plaintiffs have not effectuated service of original process upon Moving Defendant, Teofilo Diaz; therefore, removal is timely under U.S.C. § 1446(b).

13. Moving Defendants shall provide written notice to the Plaintiffs, as required by 28 U.S.C. § 1416(d).

14. A copy of this Notice will be filed with the Prothonotary of Philadelphia County,

as required by 28 U.S.C. 1446 § (d).

FORRY ULLMAN

By: _____

SEAN P. BUGGY, ESQUIRE

Attorney I.D. No. 77847

150 South Warner Road, Suite 450

King of Prussia, PA 19406

610-977-4129

sbuggy@forryullman.com

Dated: 9/13/17

Exhibit “A”

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

For Prothonotary Use Only (Docket Number)

MAY 2017**002543**

E-Filed Number: 1705042534

PLAINTIFF'S NAME
JAMES G. KOZENIEWSKI

DEFENDANT'S NAME
TEOFILO DIAZ

PLAINTIFF'S ADDRESS
1125 SILVER LAKE LANE
BLUE BELL PA 19422

DEFENDANT'S ADDRESS
110 WINDSOR AVENUE
MERIDEN CT 06451

PLAINTIFF'S NAME
MARY CATHERINE. KOZENIEWSKI

DEFENDANT'S NAME
CARGO SOLUTION EXPRESS, INC.

PLAINTIFF'S ADDRESS
1125 SILVER LAKE LANE
BLUE BELL PA 19422

DEFENDANT'S ADDRESS
14587 VALLEY BOULEVARD
FONTANA CA 92335

PLAINTIFF'S NAME

DEFENDANT'S NAME
DIRECT HAUL CARRIER, LLC

PLAINTIFF'S ADDRESS

DEFENDANT'S ADDRESS
7349 MILLIKEN AVENUE SUITE 140 - 310
RANCHO CUCAMONGA CA 91730

TOTAL NUMBER OF PLAINTIFFS

2

TOTAL NUMBER OF DEFENDANTS

3

COMMENCEMENT OF ACTION

☒ Complaint☐ Petition Action☐ Notice of Appeal☐ Writ of Summons☐ Transfer From Other Jurisdictions

AMOUNT IN CONTROVERSY

☐ \$50,000.00 or less☒ More than \$50,000.00

COURT PROGRAMS

☐ Arbitration☐ Jury☒ Non-Jury☐ Other:☐ Mass Tort☐ Savings Action☐ Petition☐ Commerce☐ Minor Court Appeal☐ Statutory Appeals☐ Settlement☐ Minors☐ W/D/Survival

CASE TYPE AND CODE

2V - MOTOR VEHICLE ACCIDENT

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

**FILED
PRO PROTHY**IS CASE SUBJECT TO
COORDINATION ORDER?

YES

NO

MAY 17 2017**K. EDWARDS**

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: JAMES G KOZENIEWSKI , MARY
CATHERINE KOZENIEWSKI

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY

E. DOUGLAS DISANDRO

ADDRESS

1760 MARKET STREET
SUITE 1201
PHILADELPHIA PA 19103

PHONE NUMBER

(215) 587-9900

FAX NUMBER

(215) 587-9930

SUPREME COURT IDENTIFICATION NO.

34397

E-MAIL ADDRESS

dd@disandromalloy.com

SIGNATURE OF FILING ATTORNEY OR PARTY

E. DOUGLAS DISANDRO

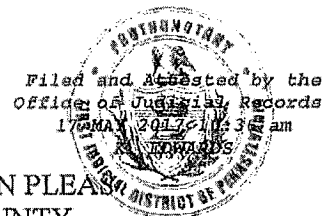
DATE SUBMITTED

Wednesday, May 17, 2017, 10:36 am

FINAL COPY (Approved by the Prothonotary Clerk)

DISANDRO & MALLOY, P.C.
By: E. Douglas DiSandro, Esquire
Identification No. 34397
1760 Market Street, Suite 1201
Philadelphia, Pennsylvania 19103
(215) 587-9900

ATTORNEY FOR PLAINTIFF



JAMES G. KOZENIEWSKI and
MARY CATHERINE KOZENIEWSKI, h/w
1125 Silver Lake Lane
Blue Bell, PA 19422

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

vs.

TERM, 2017

TEOFILO DIAZ
110 Windsor Avenue
Meriden, CT 06451
and
CARGO SOLUTION EXPRESS, INC.
14587 Valley Boulevard
Fontana, CA 92335
and
DIRECT HAUL CARRIER, LLC
7349 Milliken Avenue
Suite 140 - 310
Rancho Cucamonga, CA 91730

NO.

CIVIL ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE
One Reading Center
Philadelphia, PA 19107
Telephone: 215-238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROVEER A USTED CON INFORMACION DE COMO ALQUILAR UN ABOGADO. SI USTED NO TIENE DINERO PARA ALQUILAR UN ABOGADO, ESTA OFICINA PUEDE PROVEER A USTED CON INFORMACION DE AGENCIAS QUE PUEDE OFRECER SERVICIOS LEGALES A PERSONAS ELEGIBLE A UN COSTO REDUCIDO O SIN COSTO NINGUNO.

ASOCIACION DE LICENCIADOS DE FILADELFIA SERVICIO
DE REFERENCIA E INFORMACION LEGAL
One Reading Center
Filadelfia, Pennsylvania 19107
Teléfono: 215-238-1701

Case ID: 170502543

DISANDRO & MALLOY, P.C.
By: E. Douglas DiSandro, Esquire
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(215) 587-9900

ATTORNEY FOR PLAINTIFF

JAMES G. KOZENIEWSKI and
MARY CATHERINE KOZENIEWSKI, h/w
1125 Silver Lake Lane
Blue Bell, PA 19422

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

vs.

TERM, 2017

TEOFILO DIAZ
110 Windsor Avenue
Meriden, CT 06451
and
CARGO SOLUTION EXPRESS, INC.
14587 Valley Boulevard
Fontana, CA 92335
and
DIRECT HAUL CARRIER, LLC
7349 Milliken Avenue
Suite 140 – 310
Rancho Cucamonga, CA 91730

NO.

CIVIL ACTION

COUNT ONE

JAMES G. KOZENIEWSKI V. TEOFILO DIAZ AND CARGO
SOLUTION EXPRESS, INC. AND DIRECT HAUL CARRIER, LLC

1. Plaintiff, James G. Kozeniewski, is an individual who resides at 1125 Silver Lake Lane, Blue Bell, PA 19422.
2. Plaintiff, Mary Catherine Kozeniewski, is an individual who resides at 1125 Silver Lake Lane, Blue Bell, PA 19422.

3. Defendant, Teofilo Diaz, is an individual who resides at 110 Windsor Avenue, Meriden, CT 06451.

4. Defendant, Cargo Solution Express, Inc., is a California Corporation with a principal place of business located at 14587 Valley Boulevard, Fontana, CA 92335, and an agent for service of process c/o Balwinder K. Kang, 24203 Peak Ct., Diamond Bar, CA 91765.

5. Defendant, Direct Haul Carrier, LLC, is a California Corporation with a principal place of business located at 7349 Milliken Avenue, Suite 140-310, Rancho Cucamonga, CA 91730, and an agent for service of process c/o Bobby S. Kang, 9216 Cottonwood Way, Rancho Cucamonga, CA 91737.

6. At all times material herein, defendants, Cargo Solution Express, Inc. and/or Direct Hall Carrier, LLC, did in fact solicit customers via advertisements in Philadelphia newspapers and in Philadelphia telephone directory and were thereby conducting business on a routine basis in the Philadelphia area and deriving compensation therefrom, and further operated their tractors and/or trailers throughout the City of Philadelphia.

7. On or about May 28, 2015, the plaintiff, James G. Kozeniewski, was the owner and operator of a certain motor vehicle involved in the accident hereinafter referred to.

8. On or about the aforesaid date, the defendant, Teofilo Diaz, did operate, possess and control a certain tractor trailer involved in the accident hereinafter referred to.

9. At all times material hereto, defendants, Cargo Solution Express, Inc. and/or Direct Haul Carrier, LLC, owned, maintained and serviced a certain tractor trailer which was involved in the accident hereinafter referred to.

10. On or about May 28, 2015, the tractor trailer operated by the defendant, Teofilo Diaz and/or another agent, servant, workman or employee, was owned by defendants, Cargo

Solution Express, Inc. and/or Direct Haul Carrier, LLC, and was being operated by defendant, Teofilo Diaz and/or another agent, servant, workman or employee, with the permission of defendants, Cargo Solution Express, Inc. and/or Direct Haul Carrier, LLC, and as the agent, servant, workman and/or employee of said defendants, Cargo Solution Express, Inc. and/or Direct Haul Carrier, LLC, and in the furtherance of the interests of defendants, Cargo Solution Express, Inc. and/or Direct Haul Carrier, LLC, acting at all times within the course and scope of his employment.

11. On or about May 28, 2015, the vehicle owned and operated by the plaintiff, James G. Kozeniewski, was proceeding in an eastbound direction on Lincoln Highway, public highway in Salisbury Township, Lancaster County, Commonwealth of Pennsylvania.

12. On or about the aforesaid date, the tractor trailer being operated by the defendant, Teofilo Diaz and/or another agent, servant, workman or employee, as the agent, servant, workman and/or employee of defendants, Cargo Solution Express, Inc. and/or Direct Haul Carrier, LLC, was also proceeding in an eastbound direction on Lincoln Highway, when it was so carelessly, negligently and recklessly controlled and operated as to cause it to come into contact and collision with the rear of the plaintiff's vehicle which was then and there lawfully proceeding, said collision resulting in injuries to the plaintiff hereinafter more specifically set forth.

13. At the time and place aforesaid, the carelessness, recklessness and negligence of the defendants, consisted of the following:

(a) Operating the said tractor trailer at a high and excessive rate of speed under the circumstances;

(b) Failing to have the said tractor trailer under proper and adequate control;

- (c) Failing to give proper and sufficient notice of his approach;
- (d) Driving too fast for the conditions then and there present, including but not limited to the weather, road and traffic conditions and/or the size of the tractor trailer and its load;
- (e) Being inattentive in failing to maintain a careful, cautious and prudent lookout upon the highway;
- (f) Failing to exercise due care and caution under the conditions then and there present, including but not limited to the weather, road and traffic conditions and/or the size of the tractor trailer and its load;
- (g) Operating the said tractor trailer without due regard for the rights, safety and position of the plaintiff;
- (h) Violating the various ordinances and laws of the County of Lancaster, and the statutes of the Commonwealth of Pennsylvania pertaining to the operation and control of motor vehicles and/or tractor trailers;
- (i) Driving the tractor trailer at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead;
- (j) Driving the tractor trailer at a speed greater than is reasonable and prudent under the conditions with regard to the actual and potential hazards then and there existing;
- (k) Driving the tractor trailer without proper and adequate training;
- (l) Failing to properly observe and obey the statutes of Pennsylvania pertaining to the operation of motor vehicles and/or tractor trailers;
- (m) Failing to properly observe and obey the regulations of the Interstate Commerce Commission pertaining to the operation of tractor trailers;

- (n) Driving the tractor trailer in violation of Title 49 C.F.R. Subchapter (B);
- (o) Violating various federal statutes, rules and regulations including but not limited to the Federal Motor Carrier Safety Regulations as contained in 49 C.F.R. Subchapter (B);
- (p) Violating hours regulations of the FMCSR;
- (q) Failing to properly maintain and service said tractor trailer;
- (r) Failing to properly train their agents, servants, workmen and/or employees;
- (s) Failing to exercise due care and caution under the circumstances;
- (t) Disregarding traffic controls and conditions;
- (u) Negligently entrusting said vehicle;
- (v) Negligently hiring their agents, servants, workmen and/or employees;
- (w) Being otherwise negligent under the circumstances;
- (x) Any other acts or omissions which constitute negligence, carelessness, and/or reckless indifference for the safety of the plaintiff and that are discovered in the discovery process as promulgated by the Pennsylvania Rules of Civil Procedure or at the trial of this case.

14. As a direct result of the defendants' carelessness, recklessness and negligence as aforesaid, plaintiff, James G. Kozeniewski, sustained severe internal and external injuries in and about the head, body and limbs, including but not limited to: C4-C5 central herniated disc and bilateral foraminal stenosis, C5-C6 central herniated disc, C6-C7 central and left paracentral herniated disc, superimposed bulge, severe left and moderate right foraminal stenosis, mass effect exerted on spinal cord with canal stenosis, C7-T1 annular tear with central herniated disc, T2-T3 and T3-T4 bulging, C3-C4 disc bulge, epidural injections, and a severe shock to his nervous system, all of which have caused him and will continue to cause him great pain and

agony, and have prevented him and will continue to prevent him in the future from attending to his daily duties and occupation, all to his great financial damage and loss.

15. At all times relevant herein, the plaintiff, James G. Kozeniewski, will be considered covered by the Full Tort option applicable under the Pennsylvania Motor Vehicle Financial Responsibility Law, which provides him an unlimited right to sue for both economic and non-economic damages and pain and suffering due to the fact that on the date of the accident, the vehicle operated by the defendant, Teofilo Diaz, was registered in a State other than the Commonwealth of Pennsylvania

16. In addition, plaintiff has sustained a serious impairment of bodily function and permanent injuries arising from this accident described before, all of which give him the right to sue under Pennsylvania Law, despite the fact that he is covered by the full tort option.

17. Further, by reason of the aforesaid, plaintiff, James G. Kozeniewski, has been obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure himself of his said injuries, and will be obliged to expend additional sums of money for the same purposes in the future, all to his great financial damage and loss.

18. As a further result of the accident and the injuries sustained therein, plaintiff, James G. Kozeniewski, has and/or may suffer lost wages and an impairment of his earning capacity and power, which lost wages and impairment of earning capacity and power has or may exceed the sums recoverable under the limitations of the Pennsylvania Motor Vehicle Financial Responsibility law.

19. As a direct result of the accident aforesaid, plaintiff has and will hereinafter incur additional financial and/or medical expenses or losses which will exceed amounts which he may

otherwise be entitled to recover under the Pennsylvania Motor Vehicle Financial Responsibility Law.

20. On the aforesaid date, plaintiff, James G. Kozeniewski, was the owner of a 2004 Toyota Avalon, which was in excellent physical and mechanical condition. As a direct result of the negligence of the defendant, plaintiff's vehicle sustained extensive damage requiring repair and replacement of parts, together with labor charges, all to plaintiff's great financial damage and loss.

WHEREFORE, plaintiff, James G. Kozeniewski, demands judgment against the defendants, Teofilo Diaz and Cargo Solution Express, Inc. and Direct Haul Carrier, LLC, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, plus interest and costs.

COUNT TWO

MARY CATHERINE KOZENIEWSKI V. TEOFILO DIAZ AND CARGO SOLUTION EXPRESS, INC. AND DIRECT HAUL CARRIER, LLC

21. Plaintiff, Mary Catherine Kozeniewski, is the wife of plaintiff, James G. Kozeniewski, and resides with him at 1125 Silver Lake Lane, Blue Bell, PA 19422.

22. Plaintiff, Mary Catherine Kozeniewski, incorporates herein by reference the averments contained in paragraphs 1 through 20, inclusive, as fully as though the same were set forth herein at length.

23. As a direct result of the defendants' carelessness, recklessness and negligence as aforesaid, plaintiff, Mary Catherine Kozeniewski, was, for a period of time, may and probably will in the future be deprived of the society, assistance and support of her husband, plaintiff,

James G. Kozeniewski, all of which has been and will continue to be to her great financial, physical, psychological and emotional damage and loss.

WHEREFORE, plaintiff, Mary Catherine Kozeniewski, demands judgment against the defendants, Teofilo Diaz and Cargo Solution Express, Inc. and Direct Haul Carrier, LLC, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, plus interest and costs.


DISANDRO & MALLOY, P.C.

BY: 

E. DOUGLAS DISANDRO, ESQUIRE
ATTORNEY FOR PLAINTIFFS

VERIFICATION

I, James G. Kozeniewski, make this verification subject to the penalties of 18 Pa. C.S.A. '4904, relating to unsworn falsification to authorities. The attached pleading is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in preparation for the prosecution of this lawsuit. The language contained in the pleading is that of counsel and not mine. I have read the pleading, and to the extent it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information, and belief. To the extent that the contents of the pleading are that of counsel, I have relied upon my counsel in making this verification.



JAMES G. KOZENIEWSKI

5/16/17

Dated: